

SUBCHAPTER B : RATES, RATE MAKING AND RATE/TARIFF CHANGES

§291.21. Form and Filing of Tariffs.

(a) Approved tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under the Texas Water Code, §13.187(a) (concerning to notice of intent) after the proposed effective date, unless the rates are suspended or the commission sets interim rates. The regulatory assessment required in §5.235(n) of the code does not have to be listed on the utility's approved tariff to be charged and collected but shall be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service which enters into an agreement pursuant to §13.250(b)(2) of the code, may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes and filing of tariffs.

(1) Tariffs filed with applications for certificates of convenience and necessity.

(A) Every public utility shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a public utility. The tariff shall be on the form the commission prescribes or another form acceptable to the commission.

(B) Every water supply or sewer service corporation shall file with the commission the number of copies of its tariff required in the application form containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service when it applies for a certificate of convenience and necessity to operate as a retail public utility.

(2) Minor Tariff Changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county can change rates for water or wastewater service without commission approval but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change. The executive director may approve the following minor changes to tariffs:

(A) service rules and policies;

(B) changes in fees for customer deposits, meter tests, return check charges and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(C) implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(D) surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(E) addition of the regulatory assessment as a separate item or to be included in the currently authorized rate; or

(F) addition of a provision allowing a utility to collect wastewater charges pursuant to an agreement under the Texas Water Code, §13.250(b)(2).

(G) The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff Revisions and Tariffs Filed With Rate Changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Each rate schedule must clearly state the territory, subdivision, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall contain sections setting forth:

(1) a table of contents;

(2) a list of the cities and counties, and subdivisions or systems, in which service is provided;

(3) the certificate of convenience and necessity number under which service is provided;

- (4) the rate schedules;
- (5) the service rules and regulations, including forms of the service agreements, if any;
- (6) the extension policy; and
- (7) an approved water rationing plan.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the application number, date of the order, a list of tariff sheets filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's model tariff or any modifications of a rule in the model tariff must be clearly noted. All tariff sheets shall comply with all other sections in this chapter and shall include only changes ordered. The effective date and/or wording of the tariffs shall comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to persons requesting information and afford these persons an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Tariffs must be filed to reflect changes in rates or regulations set by other regulatory authorities and shall include a copy of the order or ordinance authorizing the change. Each utility operating within the corporate limits of a municipality exercising original jurisdiction must have a copy of its current tariff which has been authorized by the municipality on file with the commission.

(h) Purchased water or sewage treatment provision.

(1) A utility which purchases water or sewage treatment or pays water use fees to an underground water conservation district may include a provision in its tariff to pass through to its customers changes in such costs. The provision shall specify how it is calculated and affects customer billings.

(2) This provision must be approved by the commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.

(3) Once the provision is approved, any revision of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The executive director's review of a proposed revision

is an informal proceeding. Only the commission, the executive director or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.

(4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(A) submit a written notice to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and shall contain the effective date of the change, the present calculation of customer billings, the new calculation of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice shall include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water)(purchased sewer)(water use fee) adjustment clause to recognize (increases)(decreases) in the (water use fee)(cost of purchased)(water)(sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee)(purchased)(water)(sewage treatment)."

(5) Notice to the commission shall include a copy of the notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.

(6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

(i) Effective date. The effective date of a tariff change is the date of approval by the executive director unless otherwise stated in the letter transmitting the approval or the date of approval by the commission, unless otherwise specified in a commission order or rule. The effective date of a proposed rate increase under §13.187 of the code is the proposed date on the notice to customers and the commission, unless suspended and must comply with the requirements of §291.8(b) of this title (relating to Administrative Completeness).

(j) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, one copy of its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff shall include all rules and regulations relating to or affecting the rates, utility service or extension of service or product, or commodity furnished and shall specify the CCN number and in which counties or cities it is effective.

(k) Surcharge.

(1) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(2) A surcharge to recover the actual increase in costs to the utility for sampling, inspection fees or other governmental requirements beyond the control of the utility may be collected over a specifically authorized time period without being listed on the approved tariff if specifically authorized for the utility in writing by the executive director or the municipality exercising original jurisdiction over the utility.

(3) A utility shall use the revenues collected pursuant to a surcharge only for the purposes noted and handle the funds in the manner specified according to the notice or application submitted by the utility to the commission, unless otherwise directed by the executive director. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the executive director.

(1) Temporary water rate.

(1) A utility's tariff may include a temporary water rate provision which will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures which affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision shall allow the utility to recover from customers revenues the utility would otherwise have lost due to mandatory water use reductions in accordance with the temporary water rate provision approved by the commission. If a utility obtains a portion of its water supply from another unrestricted water source or water supplier during the time the temporary water rate is in effect, the rate resulting from implementation of the temporary water rate provision must be adjusted to account for the supplemental water supply and to limit over-recovery of revenues from customers. A temporary water rate provision cannot be implemented by a utility if there exists an available, unrestricted, alternative water supply which the utility can use to immediately replace, without additional cost, the water made unavailable because of the action requiring a mandatory reduction of use of the affected water supply.

(2) The temporary water rate provision must be approved by the commission in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions through a limited rate proceeding. The formula for a temporary water rate provision under this paragraph is: Figure 1: 30 TAC §291.21(1)(3)

TGC = temporary gallonage charge
cgc = current gallonage charge
r = water use reduction expressed as a decimal fraction (the pumping restriction)
pr = percentage of revenues to be recovered expressed as a decimal fraction (i.e. 50% = 0.5)
$$TGC = cgc + [(pr)(cgc)(r)/(1.0-r)]$$

(A) The utility must file a temporary water rate application prescribed by the executive director and provide customer notice as required in the application, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the classes of customers affected, the rates affected, information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission and the time frame for protests and any other information which is required by the executive director in the temporary water rate application. The utility's existing rates will not be subject to review in the proceeding and the utility will only be required to support the need for the temporary rate. A request for a temporary water rate provision under this paragraph is not considered a statement of intent to increase rates subject to the 12 month limitation in §291.23 of this title, (relating to Time Between Filings.)

(B) The utility must be able to prove that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision using the formula in paragraph (3) of this subsection or any other method acceptable to the commission to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues it must submit financial data to support its existing rates as well as the temporary water rate provision even if no other rates are proposed to be changed. The utility must complete a rate application and provide notice in accordance with the requirements of §291.22 of this title (relating to Notice of Intent To Change Rates). The utility's existing rates will be subject to review in addition to the temporary water rate provision.

(B) The utility must be able to prove that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the commission in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate into effect only after:

(A) the temporary water provision has been approved by the commission and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures which affect the utility's customers' use of utility services; and,

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility can readjust its rates using the temporary water rate provision as necessary to respond to modifications or changes to the original order requiring mandatory water use reductions by reissuing notice as required by paragraph (7) of this subsection. The executive director's review of the proposed implementation of an approved temporary water rate provision is an informal proceeding. Only the commission, the executive director, or the utility may request a hearing on the proposed implementation.

(7) A utility that wishes to place a temporary water rate into effect shall take the following actions prior to the beginning of the billing period in which the temporary water rate takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the executive director; and

(B) mail notice to the utility's customers. Notice may be in the form of a billing insert and shall contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate is implemented. The notice shall include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Texas Natural Resource Conservation Commission to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from (\$ per 1,000 gallons to \$ per 1,000 gallons)."

(8) A utility must stop charging a temporary water rate as soon as is practical after the order which required mandatory water use reduction is ended but in no case later than the end of the billing period which was in effect when the order was ended. The utility must notify its customers of the date that the temporary water rate ends and that its rates will return to the level authorized before the temporary water rate was implemented.

(9) If the commission initiates an inquiry into the appropriateness or the continuation of a temporary water rate, it may establish the effective date of its decision on or after the date the inquiry is filed.

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Effective September 20, 1996

§291.22. Notice of Intent To Change Rates.

(a) In order to change rates which are subject to the commission's original jurisdiction, the applicant utility shall file with the commission an original completed application for rate change with the number of copies specified in the application form and shall give notice of the proposed rate change by mail or hand delivery to all affected utility customers at least 30 days prior to the proposed effective date. Notice shall be provided on the notice form included in the commission's rate application package and shall contain the following information:

(1) the utility name and address, current rates, the proposed rates, the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated as a dollar amount, and the classes of utility customers affected. The effective date of the new rates must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the new rates may not apply to service received before the effective date of the new rates;

(2) information on how to protest the rate change, the required number of protests to ensure a hearing, the address of the commission, and the time frame for protests; and,

(3) any other information which is required by the executive director in the rate change application form.

(b) The governing body of a municipality or a political subdivision which provides retail water or sewer service to customers outside the boundaries of the municipality or political subdivision shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal who resides outside the boundaries within 30 days after the date of the final decision on a rate change. The commissioners court of an affected county which provides water or sewer service shall mail or hand deliver individual written notice to each affected ratepayer eligible to appeal within 30 days after the date of the final decision on a rate change. The notice must include at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained.

(c) Notices may be mailed separately, or may accompany customer billings. Notice of a proposed rate change by a utility must be mailed or hand delivered to the customers at least 30 days prior to the effective date of the rate increase.

(d) The applicant utility shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 30 days prior to the effective date of the proposed change. If the utility is requesting a rate change from the commission for customers residing outside the municipality, it must also provide a copy of the rate application filed with the commission to the municipality. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(e) Proof of notice in the form of an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such mailing, shall be filed with the commission by the applicant utility as part of the rate change application. Notice to customers is sufficient if properly stamped and addressed to the customer and deposited in the U. S. Mail at least 30 days before the effective date.

(f) Standby Fees. A utility may request in a rate change application that standby fees be approved for property or lots for which the utility has previously entered into an agreement to serve or construction of water or sewer utility facilities has already begun or been completed if the developer owning the property at the time the rate change application is filed is given individual written notice by certified mail of the request and an opportunity to protest.

(g) Emergency Rate Increase in Certain Circumstances.

(1) After receiving a request, the commission may authorize an emergency rate increase for a utility:

(A) for which a person has been appointed under the Texas Water Code, §13.4132; or

(B) for which a receiver has been appointed under the Texas Water Code, §13.412; and

(C) if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(2) A request for an emergency rate increase must include the following:

(A) the effective date of the rate increase;

(B) a summary of the reasons for the rate increase;

(C) sufficient information to support the computation of the proposed rates;
and

(D) any other information requested by the executive director.

(3) The effective date must be the first day of a billing cycle unless otherwise authorized by the commission.

(4) Any emergency rate increase related to charges for actual consumption will be for consumption after the effective date. An increase or the portion of the increase which is not related to consumption may be billed at the emergency rate on the effective date or the first billing after approval by the commission.

(5) The utility, after receiving authorization for the emergency rate increase, shall provide notice of the rate increase to each ratepayer as soon as possible, but not later than the effective date for the new rate. This notice shall contain the following information:

(A) the utility name and address, the previous rates, the emergency rates, the effective date of the rate increase, and the classes of utility customers affected; and

(B) the following statement: "This emergency rate increase has been approved by the Texas Natural Resource Conservation Commission under authority granted by the Texas Water Code, §13.4133 to ensure the provision of continuous and adequate service to the utility's customers. The commission is also required to schedule a hearing to establish a final rate within 15 months after the date on which the emergency rates take effect. The utility is required to provide notice of the hearing to all customers at least 10 days prior to the date of the hearing. The additional revenues collected under this emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service."

(6) The utility shall maintain adequate books and records for a period not less than 12 months to allow for the determination of a cost of service as set forth in §291.31 of this title (relating to Cost of Service).

(7) During the pendency of the emergency rate increase, the commission may require that the utility deposit all or part of the rate increase into an interest-bearing escrow account as set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase).

(h) Line extension and construction charges. A utility shall request in a rate change application that its extension policy be approved or amended. The application shall show the proposed tariff, and other information requested by the executive director. The request may be made with a request to change one or more of the utility's other rates.

Adopted December 6, 1995

Effective January 10, 1996

§291.23. Time Between Filings.

Unless the commission requires it to deliver a corrected statement of intent, a utility or two or more utilities under common control or ownership may not file a notice of intent to increase rates more than once in a 12-month period except:

- (1) to implement an approved purchase water pass through provision;
- (2) to adjust the rates of a newly acquired utility system; or
- (3) to comply with a commission order;
- (4) to adjust rates authorized by §291.21(b)(2) of this title (relating to Form and Filing of Tariffs); or

(5) unless the regulatory authority determines that a financial hardship exists. A utility may be considered to be experiencing a financial hardship if revenues are insufficient to:

- (A) cover reasonable and necessary operating expenses; or
- (B) cover cash flow needs which may include regulatory sampling requirements, unusual repair and maintenance expenses, revenues to finance required capital improvements or, in certain instances, existing debt service requirements.

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Effective January 10, 1996

§291.24. Jurisdiction Over Affiliated Interests.

The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated

interests relating to such transactions, including, but in no way limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

§291.25. Rate Change Applications, Testimony and Exhibits.

(a) A change in rates under the Texas Water Code §13.187, is initiated by the submission of a rate filing package which consists of a rate/tariff change application form, or such other forms as prescribed by the commission, a statement of intent to change rates, and a copy of the notice the applicant has provided to customers and other affected parties.

(b) A utility filing for a change in rates under the Texas Water Code, §13.187, shall be prepared to go forward at a hearing on the data which has been submitted under subsection (a) of this section and sustain the burden of proof of establishing that its proposed changes are just and reasonable.

(c) An original and four copies of the rate filing package shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that books amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the hearings examiner assigned to the application.

(f) If required to prefile testimony, the executive director shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses eight days prior to the final hearing but shall not otherwise be required to present its case prior to that time, except upon the granting of motions for discovery.

(g) The items in the rate filing package may be modified on a showing of good cause.

§291.26. Suspension of Rates.

(a) Failure to properly complete the rate application or comply with the notice requirements and proof of notice requirements may result in suspension of the rate change by the commission or the executive director. The utility shall not renotify its customers of a new proposed effective date until the utility receives written notification from the executive director that all deficiencies have been corrected.

(b) The effective date of any rate change may be suspended by the commission or the executive director if the utility does not have a certificate of convenience and necessity or a completed

application pending with the commission to obtain or to transfer a certificate of convenience and necessity.

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§291.27. Request for a Review of a Rate Change by Ratepayers Pursuant to the Texas Water Code, §13.187(b).

(a) Petitions for review of rate actions filed by ratepayers pursuant to the Texas Water Code, §13.187(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action; and

(2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer (the petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer).

(b) Ratepayers may initiate a review of a rate change application by filing individual complaints rather than joint petitions. Each complaint should contain the information required in subsection (a) of this section.

(c) In order for a review to be initiated under subsection (a) or (b) of this section, complaints must be received from a total of 1000 or 10% of the affected ratepayers, whichever is less.

§291.28. Action on Notice of Rate Change Pursuant to the Texas Water Code, §13.187(b).

The commission may conduct a public hearing on any application.

(1) If, within 60 days after the effective date of the rate change, the commission receives a complaint from any affected municipality, or from the lesser of 1000 or 10% of the ratepayers of the utility over whose rates the commission has original jurisdiction, or on its own motion, the commission shall set the matter for hearing. If after hearing, the commission finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the commission shall determine the rates to be charged by the utility and shall fix the rates by order.

(2) If a hearing is scheduled, the commission may require the utility to provide notice of the time and place of the hearing to its customers through a billing insert or separate mailing.

(3) If the commission does not receive sufficient customer complaints or if the executive director does not request a hearing within 120 days after the effective date, the utility's proposed tariff will be reviewed for compliance with the Code and the provisions of this chapter. If the proposed tariff complies with the Code and the provisions of this chapter, it shall be stamped approved by the executive director or his designated representative and a copy returned to the utility. The

executive director may require the utility to notify its customers that sufficient complaints were not received to schedule a hearing and the proposed rates were approved without hearing.

(4) The executive director or commission may request additional information from any utility in the course of evaluating the rate/tariff change request, and the utility is required to provide that information within 20 days of receipt of the request, unless a different time is agreed to. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the commission may disallow the nonsupported expenses.

(5) If the commission sets a rate different from that proposed by the utility in its notice of intent, the utility shall include in its first billing at the new rate a notice to the customers of the rate set by the commission including the following statement: "The Texas Natural Resource Conservation Commission, after public hearing, has established the following rates for utility service:".

(6) If the commission conducts a hearing, it may establish rates different from those currently being charged or proposed to be charged by the utility, but the total annual revenue increase resulting from the commission's rates shall not exceed the greater of the annual revenue increase provided in the customer notice or revenue increase that would have been produced by the proposed rates except for the inclusion of reasonable rate case expenses. The commission may reclassify a portion of a utility's proposed rates as a capital improvement surcharge if the revenues are to be used for capital improvements or are to service debt on capital items.

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Effective September 20, 1996

§291.29. Interim Rates.

(a) The commission may on a motion by the executive director or by the appellant under the Texas Water Code, §13.043 (a), (b) or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under the Texas Water Code, §13.187, as amended, the executive director may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the commission to set interim rates.

(c) Interim rates may be established by the commission in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(d) In making a determination under subsection (c) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:

(1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(2) deny interim rate relief;

(3) require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(4) remand the request for interim rates to the Office of Hearings Examiners for an evidentiary hearing on interim rates. If so authorized by the commission's remand order, the presiding hearings examiner may issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.

(e) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(f) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission.

(g) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(h) The utility must provide a notice including the interim rates set by the commission with the first billing at the interim rates with the following wording: "The Texas Natural Resource Conservation Commission has established the following interim rates to be in effect until the final decision on the requested rate change or until another interim rate is established".

(i) If the commission establishes interim rates or an escrow account, the commission must make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility.

(j) This subsection applies to a rate application proceeding under §291.22(h) (concerning Notice of Intent to Change Rates) if the application concerns only a proposed adoption or change in an extension policy. It also applies to a rate complaint proceeding concerning a utility's extension policy under Texas Water Code, §13.186 or §13.041. In such cases if the case has been referred to the State Office of Administrative Hearings, the assigned judge may in accordance with the requirements of this section order interim rates concerning the utility's extension policy.

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§291.30. Escrow of Proceeds Received Under Rate Increase.

(a) Rates received during the pendency of a rate proceeding.

(1) During the pendency of its rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) The utility shall file an original and three copies of a completed escrow agreement between the utility and the financial institution with the commission for review and approval by the executive director.

(3) If necessary to meet the utility's current operating expenses, or for other good cause shown, the executive director may authorize the release of funds to the utility from the escrow account during the pendency of the proceeding.

(4) The executive director, except for good cause shown, shall give all parties-of-record at least 10 days notice of an intent to release funds from an escrow account. Any party may file a motion with the commission to enjoin the executive director's proposed release of escrow funds or to establish different terms and conditions for the release of escrowed funds.

(5) Upon the commission's establishment of final rates, all funds remaining in the escrow account shall be released to the utility or ratepayers in accordance with the terms of the commission's order.

(b) Surcharge revenues granted by commission order at the conclusion of a rate proceeding.

(1) A utility may be required to deposit all or part of surcharge funds authorized by the commission into an interest-bearing escrow account with a federally insured financial institution, under such terms and conditions as determined by the commission.

(2) Prior to collecting any surcharge revenues that are required to be escrowed, the utility shall submit for executive director approval an original and three copies of a completed escrow agreement between the utility and the financial institution. If the utility fails to promptly remedy any deficiencies in the agreement noted by the executive director, the executive director may suspend the collection of surcharge revenues until the agreement is properly amended.

(3) In order to allow the utility to complete the improvements for which surcharge funds were granted, the executive director may authorize the release of funds to the utility from the escrow account after receiving a written request including appropriate documentation.

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§291.31. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable expenses. In computing a utility's allowable

expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §113.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation shall be allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes shall be computed according to the provisions of the Texas Water Code, §13.185(f), if applicable);

(E) the reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) funds expended in support of membership in professional or trade associations provided such associations, contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses shall not be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) costs, including, but not limited to, interest expense of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission; and

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital shall be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant used by and useful to the utility in providing service:

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor;

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis over the expected useful life of the item or facility;

(iii) The original cost of plant, property, and equipment acquired from an affiliated interest shall not be included in invested capital except as provided in the Texas Water Code, §13.185(e);

(iv) Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital.

(B) working capital allowance to be composed of, but not limited to the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

(ii) reasonable prepayments for operating expenses (prepayments to affiliated interests shall be subject to the standards set forth in the Texas Water Code, §13.185(e); and

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

(3) Items Not Included in Rate Base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

(A) Miscellaneous items. Certain items which include, but are not limited to, the following:

- (i) accumulated reserve for deferred federal income taxes;
- (ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;
- (iii) contingency and/or property insurance reserves;
- (iv) contributions in aid of construction; and
- (v) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission may include construction work in progress in rate base to the extent that the utility has proven that:

- (i) the inclusion is necessary to the financial integrity of the utility; and
- (ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

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§291.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses, and preserve the financial integrity of the utility.

(b) Conservation. In order to promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.

(c) Volume Charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1000 gallons or 100 cubic feet, or the fractional portion of the usage.

(d) Surcharges for capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service.